IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 147 of 2007

(Old No. 665 of 1983)

(1) Kalyan Singh, S/o Gulab Singh
(2) Baktawar Singh, S/o Dayal Singh
(3) Bhawan Singh, S/o Alam Singh
(4) Narendra Singh, S/o Kalyan Singh
(5) Dharam Singh, S/o Bhakhtaw Singh
All Residents of Village Main, Patwari Circle Dungari, Tehsil Karwaha, District Chamoli.

…….Accused/Appellants.

Versus

State …….Respondent.

Sri R.S. Sammal and Sri B.S. Negi, learned counsel for the appellants.
Sri H.C. Pujari, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 of Code of Criminal Procedure, 1973, is directed against the judgment

and order dated 26.02.1983, passed by learned Sessions Judge, Chamoli, in Sessions Trial No. 15 of 1982, whereby appellants were convicted under Sections 147, 323/149 and 458 of I.P.C.. Each one of the appellants is sentenced under Section 147 of I.P.C. to rigorous imprisonment for a period of 1-1/2 years, under Section 323/149 of I.P.C. to rigorous imprisonment for a period of two years and under Section 458 of I.P.C. to rigorous imprisonment for a period of two years.

(2) Heard learned counsel for the parties.

(3) Prosecution story in brief is that on 28.01.1982 at about 10.30 p.m. accused/appellants Kalyan Singh, Bakhtawar Singh, Bhawan Singh, Narendra Singh and Dharam Singh entered in the room of Prithwi Singh (P.W.3), in Village Main, within the limits of Patwari Circcle Dungari, Tehsil Karanprayag, District Chamoli, after making an unlawful assembly. They committed trespass by house breaking in the night and caused injuries on the person of Prithawi Singh. The First Information Report of the incident was lodged on 29.01.1982 at 11.00 a.m., which was registered against the accused in connection with offences punishable under Sections 307, 458, 326, 395 and 147 of I.P.C.. After investigation, the Investigating Officer submitted charge sheet against the accused in respect of all the said offences. After taking cognizance to the charge sheet the Magistrate committed the case to the court of Sessions for trial. Learned Sessions Judge framed charge of offences punishable under

Section 147, 458, 307 and 395/397 of I.P.C. against all the accused persons, who pleaded not guilty and claimed to be tried. In defence, they alleged that Prithawi Singh (P.W. 3) used to tease Kali Devi W/o Tej Singh, who used to live in service away from his home. It is also alleged in the defence that in the cowshed of Kali Devi an attempt to commit rape was made by Prithawi Singh in the intervening night of 28/29th of January, 1982. It is further alleged in defence that when she raised alarm, the villagers collected there and Prithawi Singh while running from the house of Kali Devi suffered injuries.

(4) Dr. G.P. Dimri (P.W.1) examined the injuries on the person of Prithawi Singh on 29.01.1982 and recorded (in Ext. A1) following injuries:

(i) Lacerated wound 5c.m.x1c.m. over the scalp, 5c.m. above left eye brow.

(ii) Lacerated wound 5c.m.x1c.m.x1c.m. over the scalp 6c.m. above the bridge of the nose and 2c.m. right to injury no. 1.

(iii) Abrasion 1c.m.x2c.m. over upper right arm 5c.m. below the tip of right achromion process.

(iv) Contusion 11c.m.x8c.m. on right upper arm 5c.m. above the anterior aspect of elbow joint.

(v) Contusion 15c.m.x3c.m., 3c.m. extending above the front of elbow joint and 12c.m. on right forearm over its front.

(vi) Abrasion 3c.m.x2c.m. on medial aspect of right wrist joint with swelling on right wrist joint and back side of right hand.

(vii) Contusion 13c.m.x2c.m. on back of left upper arm 12c.m. above the back of left elbow joint.

(viii) Multiple abrasion on left thigh in its middle.

(ix) Contusion 13c.m.x2c.m. on left hip 8c.m. below the highest point of iliac-crest of knee joint.

(x) Abrasion 2c.m.x1c.m. on left tibial shin 13c.m. below the anterior aspect of knee joint.

(xi) Lacerated wound 3c.m.x1c.m.x3/4c.m. on left tibial shin 1c.m. below injury no. 10.

(xii) Abrasion 1c.m.x2c.m. on right tibial shin 11-1/2c.m. above the right ankle joint.

(xiii) Contusion 11c.m.x2-1/2c.m. on right thigh, 14c.m. above the right knee joint.

(xiv) Contusion 9c.m. on anterior side of right thigh 9c.m. above the right knee joint.

In the opinion of P.W.1, G.P. Dimri, the injuries were simple in nature, caused by blunt object.

(5) On behalf of prosecution apart from the P.W.1, G.P. Dimri, P.W.2 Narayan Singh, informant, P.W. 3 Prithawi Singh (injured), P.W. 4 Hukum Singh and P.W. 5 Mahipal Singh, Investigating Officer, are investigated. The trial court put the prosecution evidence to the accused under Section 313 of Cr.P.C., and after hearing the parties found that

offence punishable under Section 307/149 and 395/397 of I.P.C. are not proved. Accordingly all the five accused were acquitted of said two charges. However, the trial court found offences punishable under Sections 147, 323/149 and 458 of I.P.C. are proved as against all the five accused (appellants). After hearing on sentence each one of the convicts was sentenced under Section 147 of I.P.C. to rigorous imprisonment for a period of 1-1/2 years, under Section 323/149 of I.P.C. to rigorous imprisonment for a period of two years and under Section 458 of I.P.C. to rigorous imprisonment for a period of two years. Against said judgment and order dated 26.02.1983, passed by the trial court this appeal was preferred before Allahabad High Court, from where it is received by this Court under Section 35 of U.P. Reorganization Act, 2000, for its disposal.

(6) As far as the sentencing the appellants under Section 323/149 is concerned, the same is erroneous in law as the maximum sentence provided under Section 323 of I.P.C. is one year and fine, not two years, as awarded by the trial court. Apart from this during the pendency of this appeal the accused appellants have entered into compromise with the injured and compromise has been filed with Criminal Misc. Compromise Application No. 475 of 2007 before this Court. The offence under Section 323 is compoundable offence, as such in view of the fact that the offence has been compounded all the appellants are entitled to be acquitted of said charge. As far as the offence under Section 458 of I.P.C. is concerned, neither the entry/trespass in the house of

injured is concealed nor the accused are said to have broken the doors or entered in the house from any side which was not the opening to enter in the house, rather what the witness has stated is that the doors were open and the accused entered inside the house of Prithawi Singh. Therefore, it cannot be said that the appellants committed lurking house trespass or house breaking. Learned counsel for the appellants argued that neither the appellants made any unlawful assembly nor with any common object, they entered in the house of Prithawi Singh. In this connection, it is further submitted that the defence story is that Prithawi Singh entered in house of Kali Devi in the village in her cowshed and attempted to commit rape on her. On raising alarm by her in the night villagers came out from their houses and Prithawi Singh ran away and got injured in the process. It is further submitted on behalf of appellants that a cross case was registered under Section 376/511 of I.P.C. of the incident and Prithawi Singh stood trial in Sessions Trial No. 21 of 1982 in this respect. Though the accused in said case was acquitted, but it certainly creates doubt as to the truthfulness of the prosecution story as alleged in this case. Particularly when the statement of P.W. 3 Prithawi Singh is not supported by any other eyewitness. P.W. 4 Hukum Singh has neither seen the accused entering the house nor committing the offence as alleged by the prosecution.

(7) Having heard learned counsel for the parties and after going through the entire lower court record, this Court is of the view that the charges framed against the accused

appellants Kalyan Singh, Bakhtawar Singh, Bhawan Singh, Narendra Singh and Dharam Singh cannot be said to have been proved beyond reasonable doubt, even in respect of offences punishable under Sections 147, 323, 149 or 458 of I.P.C. Therefore, this appeal deserves to be allowed. Accordingly, the appeal is allowed. All the five appellants namely Kalyan Singh, Bakhtawar Singh, Bhawan Singh, Narendra Singh and Dharam Singh, are acquitted also of the charge of offences punishable under Sections 147, 323/149 and 458 of I.P.C.. They are on bail. They need not to surrender.

(Prafulla C. Pant, J.)

Dt.22.8.2007
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